

**Aubrey Eaton d/b/a Eaton Warehousing Company
and Philip Henslee. Case 9-CA-25955**

November 29, 1991

**SUPPLEMENTAL DECISION AND
ORDER**

BY CHAIRMAN STEPHENS AND MEMBERS
DEVANEY AND OVIATT

On March 21, 1990, the National Labor Relations Board issued a Decision and Order¹ in the above-entitled proceeding in which it ordered the Respondent, inter alia, to make whole Philip Henslee, Jean Schepers, Mark Cobb, Mark Combs, and Louis Beatty for their losses resulting from the Respondent's unfair labor practices in violation of Section 8(a)(1) of the Act. On December 13, 1990, the United States Court of Appeals for the Sixth Circuit, in an unpublished decision, granted summary enforcement of the Board's Order.² A controversy having arisen over the amount of backpay due under the terms of the Board's Order, as enforced by the court, the Acting Regional Director for Region 9, on May 13, 1991, issued a compliance specification and notice of hearing, alleging the amount of backpay due, and notifying the Respondent that it should file a timely answer complying with the Board's Rules and Regulations. Although properly served copies of the specification and notice, the Respondent has failed to file an answer.

On August 26, 1991, the General Counsel filed a Motion for Summary Judgment. On August 29, 1991, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed a response to the Board's notice on September 13, 1991, and the General Counsel filed a reply on September 26, 1991.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

Section 102.56 of the Board's Rules and Regulations provides, in pertinent part, that if an answer is not filed within 21 days of the service of the specification, the Board may find the specification to be true.

The compliance specification specifically states that the Respondent shall file an answer within 21 days from the date of the specification and that, to the extent the answer fails to deny allegations of

the specification as required under the Board's Rules and Regulations, and the failure to do so is not adequately explained, the allegations shall be deemed to be true and the Respondent shall be precluded from introducing any evidence controverting them. By letters dated August 2, and August 15, 1991, the General Counsel notified the Respondent that unless an answer was received promptly, a Motion for Summary Judgment would be filed.

The Respondent on August 23, 1991, advised the General Counsel that it did not intend to file an answer because of the likelihood of reaching a settlement agreement with the Board. In its response to the Notice to Show Cause, the Respondent states that it is engaged in negotiations with the Regional Office and that it believes that a settlement agreement is likely. The General Counsel's reply disputes the Respondent's assertion that a settlement is likely.

Neither the August 23, 1991 letter nor the response constitutes an answer to the compliance specification, nor do they provide an adequate explanation why the Respondent did not file an answer to the specification and Notice to Show Cause, or any defense to the allegations in the specification.³

Under these circumstances, we find that the Respondent has not shown good cause for its failure to file an answer. In the absence of good cause being shown for the failure to file an answer, we grant the General Counsel's Motion for Summary Judgment.

Accordingly, the Board concludes that the net backpay due the discriminatees is as stated in the computations in the specification, and orders the Respondent to pay those amounts to the discriminatees.

ORDER

The National Labor Relations Board orders that the Respondent, Aubrey Eaton d/b/a Eaton Warehousing Company, Cincinnati, Ohio, its officers, agents, successors, and assigns, shall make whole the discriminatees, Philip Henslee, Jean Schepers, Mark Cobb, Mark Combs, and Louis Beatty, by paying to them the amounts set forth below, plus interest computed in the manner prescribed in *New Horizons for the Retarded*,⁴ and accrued to the date of payment, minus tax withholdings required by Federal and state laws.

³ It is well established that the "possible settlement of a case does not provide an exemption from the requirement to file an answer." *Sorensen Industries*, 290 NLRB 1132, 1133 (1988).

⁴ 283 NLRB 1173 (1987).

¹ 297 NLRB No. 151.

² Docket No. 90-6098.

<i>Name</i>	<i>Backpay Amount</i>
Philip Henslee	\$26,917
Jean Schepers	16,493
Mark Cobb	14,200
Mark Combs	3,187
Louis Beatty	615